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## CENTRAL INTELLIGENCE AGENCY

Office of Congressional Affairs

Washington, D.C. 20505

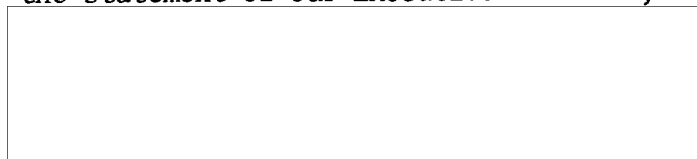
Telephone: 482-6136 3 June 1987

**TO:** Mr. Bernie Raimo  
 Permanent Select Committee on Intelligence  
 House of Representatives  
 Washington, D.C. 20515

Dear Bernie:

Attached is a copy of the Agency's draft testimony on H.R. 1013, relating to congressional oversight of the intelligence activities of the US, to be presented before your Committee on 4 June 1987.

Also attached is a classified annex to the statement of our Executive Director,



Deputy Director for Legislation  
 Office of Congressional Affairs

Attachments:

FORM 2-86

1533

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(40)

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## CENTRAL INTELLIGENCE AGENCY

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. LET ME BEGIN BY STATING FOR THE RECORD THAT THE CENTRAL INTELLIGENCE AGENCY JOINS THE DEPARTMENT OF STATE IN OPPOSING H.R. 1013. WE SHARE THE DEPARTMENT'S VIEW THAT THE PROPOSED LEGISLATION NOT ONLY WOULD INTRUDE ON THE PRESIDENT'S AUTHORITY IN FOREIGN AFFAIRS BUT ALSO WOULD DENY HIM THE NECESSARY FLEXIBILITY TO MEET INCREASINGLY SOPHISTICATED THREATS TO OUR NATIONAL SECURITY AND THAT OF OUR FRIENDS AND ALLIES. WE BELIEVE THAT THE SYSTEM NOW IN PLACE ACCEPTABLY RECONCILES THE EXECUTIVE BRANCH'S REQUIREMENT FOR FLEXIBILITY WITH CONGRESSIONAL REQUIREMENTS FOR OVERSIGHT. WE THEREFORE BELIEVE THAT ADDITIONAL LEGISLATIVE REMEDIES ARE UNNECESSARY.

LET ME FIRST BRIEFLY DESCRIBE THE CURRENT SYSTEM. I SHOULD LIKE TO CLARIFY FOR THE RECORD THE COMPREHENSIVENESS OF THE CIA'S EFFORTS TO FACILITATE MEANINGFUL OVERSIGHT BY THIS COMMITTEE, AND ITS COUNTERPART IN THE SENATE, OF THE NATION'S COVERT ACTION PROGRAMS. THE IRAN ARMS TRANSFERS STAND AS AN EXCEPTION TO THIS ADMINISTRATION'S PRACTICE. WHATEVER THE COMMITTEE'S CONCERNS ABOUT THAT EXCEPTION, THE COMMITTEE SHOULD NOT LOSE SIGHT OF THE BASIC PRACTICE.

IN HIS MARCH 31ST MESSAGE TO CONGRESS, THE PRESIDENT SAID HE "WELCOME(S) THE CONGRESS'S OVERSIGHT ROLE (IN THE INTELLIGENCE FIELD) AS IT HAS DEVELOPED IN THE LAST DECADE." THE RECORD OF THE PAST SIX YEARS -- AND OF THE NOTIFICATIONS, REPORTS, BRIEFINGS, AND TESTIMONY ON COVERT ACTION PROVIDED BY THE CIA FOR THE BENEFIT OF THE HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE AND THE SENATE SELECT COMMITTEE ON INTELLIGENCE -- IS EVIDENCE OF THE PRESIDENT'S COMMITMENT "TO MAKE THE CONGRESSIONAL OVERSIGHT PROCESS WORK." BY ITS VERY NATURE, THAT RECORD CANNOT -- IN ANY DETAILED WAY -- BE MADE PUBLIC. WE CAN, OF COURSE, PROVIDE A CLASSIFIED ANNEX TO THIS TESTIMONY DETAILING OUR PERFORMANCE IN THIS AREA. WITHOUT DENIGRATING THE IMPORTANT LESSONS OF THE IRAN/CONTRA AFFAIR FOR ALL PRESIDENTS, THE CHRONOLOGY OF THE ADMINISTRATION'S CONSULTATIONS WITH CONGRESS POINT UP THE ABUNDANT SUCCESSES OF THE CURRENT STATUTORY SCHEME. IT ALSO DEMONSTRATES THE CARE, AS THE TOWER BOARD FOUND, WITH WHICH EXECUTIVE BRANCH PROCEDURES HAVE BEEN DRAWN TO ENSURE THAT RESPONSIBLE COMMITTEES OF CONGRESS ARE KEPT "FULLY AND CURRENTLY INFORMED" OF COVERT ACTION PROGRAMS.

THERE APPEARS TO EXIST A WIDESPREAD MISPERCEPTION OF THOSE PROCEDURES. I SHOULD LIKE TO SET THE RECORD STRAIGHT. AT THE INITIATION OF A COVERT ACTION, THE CIA ROUTINELY PROVIDES THIS COMMITTEE AND THE SENATE SELECT COMMITTEE ON INTELLIGENCE WITH THE FULL TEXT OF THE PRESIDENTIAL FINDING THAT THE CONTEMPLATED ACTION IS IMPORTANT TO THE NATIONAL SECURITY. THE CIA ALSO PROVIDES ACCOMPANYING PAPERS SETTING FORTH THE SCOPE OF A PROPOSED OPERATION AND OTHER BACKGROUND INFORMATION. ONCE A PROGRAM IS INITIATED, THE CIA PROVIDES PERIODIC BRIEFINGS ON THE CONDUCT AND EFFECTIVENESS OF THE

COVERT PROGRAM IN QUESTION. THE CONGRESSIONAL INTELLIGENCE COMMITTEES ARE INFORMED WHEN AND IF EVENTS DICTATE SIGNIFICANT CHANGES IN PROGRAMS AS WELL AS OF SUCCESS AND FAILURE. THEY THUS ARE INFORMED BOTH AT THE INCEPTION AND THEN PERIODICALLY DURING THE LIFE OF A PROGRAM UNTIL THE PRESIDENT CANCELS A FINDING.

IN FACT, MY EXPERIENCE IN THIS AREA LEADS ME TO CONCLUDE THERE IS A FAIR CONSENSUS BETWEEN THIS COMMITTEE AND THE CIA OVER HOW THE OVERSIGHT RESPONSIBILITIES CAN BE ACCOMMODATED WHILE CONTINUING TO ENABLE CIA TO PROTECT THE MOST SENSITIVE ASPECTS OF OPERATIONS. A CHRONOLOGY OF CONGRESSIONAL NOTIFICATIONS AND BRIEFINGS WOULD SHOW THE EXTENT OF OUR CONSULTATION EFFORTS. WHAT IT WOULD NOT SHOW IS THAT THE CIA PROVIDES CONGRESS EVEN MORE INFORMATION ABOUT THE DETAILS OF COVERT ACTIONS -- MORE SPECIFICITY ABOUT THEM -- THAN MOST PEOPLE WHO ARE ACTUALLY ENGAGED IN THE OPERATIONS THEMSELVES.

H.R. 1013 WOULD ATTEMPT TO FORMALIZE THE CONGRESSIONAL NOTIFICATION PROCESS BY REQUIRING THAT: 1) PRESIDENTIAL FINDINGS BE IN WRITING; 2) COPIES OF ALL FINDINGS BE PROVIDED TO THE HPSCI, SSCI, VICE-PRESIDENT, SECRETARY OF DEFENSE, SECRETARY OF STATE, AND THE DCI; AND 3) DEFERRAL OF NOTICE OF SIGNIFICANT INTELLIGENCE ACTIVITIES (COVERT ACTIONS) BE LIMITED TO 48 HOURS AFTER A FINDING IS SIGNED. LET ME ADDRESS EACH POINT SEPARATELY.

FIRST, CIA AGREES THAT AS A MATTER OF POLICY, PRESIDENTIAL FINDINGS SHOULD BE REDUCED TO WRITING. AS A PRACTICAL MATTER, THEY ARE.

NONETHELESS, WE JOIN THE ADMINISTRATION IN OPPOSING A PROVISION THAT COULD PREVENT THE PRESIDENT FROM TAKING IMPORTANT IMMEDIATE ACTION IN A DIFFICULT SITUATION UNLESS AND UNTIL HIS DECISION WAS IN WRITING.

NEXT, WITH RESPECT TO DISSEMINATION OF COPIES OF FINDINGS, THE CURRENT PRACTICE IS TO PROVIDE THE DEPARTMENTS OF STATE AND DEFENSE, AND THE HOUSE AND SENATE SELECT COMMITTEES, WITH THE FULL TEXT OF THE FINDING, ALBEIT NOT THE ACTUAL SIGNED COPY.

H.R. 1013 WOULD REQUIRE THAT THE PRESIDENT MAKE THE SIGNED COPY AVAILABLE. IT IS NOT APPARENT TO US WHAT ADDITIONAL BENEFITS WOULD BE GAINED BY REQUIRING THE DISSEMINATION OF SIGNED COPIES OF ALL FINDINGS.

FINALLY, THE REQUIREMENT THAT NOTICE OF PRESIDENTIAL FINDINGS BE DEFERRED NO LATER THAN 48 HOURS AFTER THE FINDING IS SIGNED IS THE MOST TROUBLESOME PROVISION IN THE PROPOSED BILL, EVEN THOUGH IT IS OUR CURRENT PRACTICE TO PROVIDE NOTIFICATION PRIOR TO IMPLEMENTATION AND WITHIN 48 HOURS OF OUR RECEIVING THE SIGNED COPY.

THE ISSUES PRESENTED BY THIS ASPECT OF H.R. 1013 ARE NOT NEW. IT HAS BEEN OUR CONSISTENT POSITION, MR. CHAIRMAN, TO ATTEMPT TO BALANCE THE EXECUTIVE BRANCH'S NEED FOR FLEXIBILITY TO DEAL EFFICIENTLY WITH UNFORESEEABLE CIRCUMSTANCES, WITH THE OVERSIGHT RESPONSIBILITIES OF THE CONGRESS.

FOR EXAMPLE, THE MOST DIFFICULT ISSUE BETWEEN THE EXECUTIVE AND THE LEGISLATURE WHEN CONSIDERING THE INTELLIGENCE OVERSIGHT ACT OF 1980 WAS THE QUESTION OF PRIOR NOTIFICATION, WITH THE EXECUTIVE ASSERTING ON CONSTITUTIONAL GROUNDS THAT THE PRESIDENT COULD DELAY NOTIFICATION. THE COMPROMISE THAT WAS WORKED OUT WAS THAT PRIOR NOTIFICATION OF THE OVERSIGHT COMMITTEES WOULD BE THE NORM, BUT THAT THERE WOULD BE ALLOWANCE FOR EXCEPTIONAL CIRCUMSTANCES.

ON THE QUESTION OF THE PRESIDENT'S CONSTITUTIONAL PREROGATIVE TO DELAY NOTIFICATION, THE CONGRESS DID NOT CONCEDE THE POINT, BUT CHOSE NOT TO CHALLENGE THAT CONSTITUTIONAL AUTHORITY IN THAT BILL. SECTION 501B WAS ADDED INSTEAD. THIS SECTION TAKES INTO ACCOUNT THE POSSIBILITY THAT THE PRESIDENT MIGHT DELAY NOTIFICATION AND SETS FORTH THE CIRCUMSTANCES UNDER WHICH HE SHOULD REPORT AFTER DELAYING NOTIFICATION. THIS IS IMPORTANT BECAUSE OF THE VIEW EXPRESSED BY SOME IN RECENT MONTHS THAT THE PRESIDENT'S DECISION NOT TO PROVIDE ADVANCE NOTICE OF THE IRAN OPERATIONS WAS A VIOLATION OF SECTION 501. THIS SIMPLY IS NOT THE CASE, AND THE LEGISLATIVE HISTORY SURROUNDING CONSIDERATION OF THE OVERSIGHT ACT MAKES THIS CLEAR, ALTHOUGH IT WAS ACKNOWLEDGED BY ALL CONCERNED THAT DELAYED NOTIFICATION WOULD HAPPEN ONLY IN THE MOST EXTREME CASES. IN ACTUALITY, THE COMMITTEES HAVE RECEIVED ADVANCED WORD OF EVERY PRESIDENTIAL FINDING BUT FOR THE TWO INVOLVING THE ATTEMPTED RESCUE OF OUR HOSTAGES IN IRAN IN 1979-1980 AND THE NSC INITIATIVE IN 1985 AND 1986.



IN HIS HEARINGS BEFORE THE SENATE SELECT COMMITTEE IN APRIL 1987, THE THEN DIRECTOR-DESIGNATE OF THE CENTRAL INTELLIGENCE AGENCY, WILLIAM H. WEBSTER, PLEDGED TO YOU HIS INTENTION TO NOTIFY YOU OF A PRESIDENTIAL FINDING IN THE TIMELIEST MANNER POSSIBLE. DURING HIS HEARINGS, HE NOTED THAT HE BELIEVED NOTIFICATION SHOULD HAPPEN WITHIN 48 HOURS, IF AT ALL POSSIBLE. HE SAID THAT IT WOULD BE HIS RECOMMENDATION TO THE PRESIDENT THAT THE CONGRESS BE NOTIFIED OF A PRESIDENTIAL FINDING. AND HE POINTED OUT THAT THERE COULD ARISE A POINT AT WHICH THE PRESIDENT WOULD NOT ACCEPT HIS RECOMMENDATION ON NOTIFICATION, A POINT AT WHICH HE SAID HE WOULD BE OBLIGED TO CONSIDER RESIGNING HIS POSITION.

WE REMAIN CONVINCED THAT THE EXECUTIVE BRANCH'S POSITION ON THIS CRITICAL ISSUE OF NOTIFICATION IS SOUND, AND, THEREFORE, OPPOSE THE PROVISIONS OF H.R. 1013. WE WILL DO EVERYTHING REASONABLE TO RESPOND TO THE REQUIREMENTS OF CONGRESSIONAL OVERSIGHT, BUT WE MUST PRESERVE REASONABLE FLEXIBILITY FOR DEALING WITH UNFORESEEABLE FUTURE CONTINGENCIES. AS THE TOWER BOARD NOTED, "THERE IS A NATURAL TENSION BETWEEN THE DESIRE FOR SECRECY AND THE NEED TO CONSULT CONGRESS ON COVERT OPERATIONS." THAT TENSION HAS ALWAYS EXISTED, WITH CIA PLACED SQUARELY IN THE MIDDLE. WE DO NOT BELIEVE THAT THE LEGISLATION, HOWEVER WELL INTENTIONED, WILL REDUCE THAT TENSION. WE DO BELIEVE, TO PARAPHRASE CHAIRMAN BOLAND, THAT WE SHOULD LEAVE THE CONSTITUTION AS WE FIND IT. I'M NOT A LAWYER, BUT IT'S MY UNDERSTANDING THAT THE PRESIDENT'S CONSTITUTIONAL PREROGATIVES CAN'T BE TAKEN AWAY BY STATUTE. TO TRY TO DO SO, IN OUR VIEW, WOULD SIMPLY INCREASE THE TENSION IN

THIS AREA IN SITUATIONS WHERE FLEXIBILITY IS MOST NEEDED. INSTEAD, WE SHOULD, AS THE CURRENT LAW CONTEMPLATES, CONTINUE TO ATTEMPT TO WORK OUT DIFFERENCES IN "A SPIRIT OF COMITY AND MUTUAL UNDERSTANDING".



Washington, D.C. 20505

OCA 87-2308

3 June 1987

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

Enclosed is a copy of the Agency's draft testimony on H.R. 1013, relating to congressional oversight of the intelligence activities of the United States, to be presented before the House Permanent Select Committee on Intelligence on 4 June 1987. Your advice is requested as to whether there is any objection to the submission of this testimony from the standpoint of the President's program.

Sincerely,



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Deputy Director for Legislation  
Office of Congressional Affairs

Enclosure

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